

CHILD PLACEMENT DETERMINATIONS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Dan R. Eastman

This act amends the Human Services Code and the Judicial Code. The act changes the permanency plan requirements regarding long-term foster care for a child who is three years of age or younger. The act expands the grounds for removal of a foster child from the home of the foster parents without first providing a hearing to the foster parents. The act modifies fingerprinting requirements for household members in a foster home. The act allows the juvenile court to consider preplacement preferences and other requirements described in the Indian Child Welfare Act. The act clarifies when a juvenile court may order a planned permanent living arrangement other than adoption, reunification, guardianship, and kinship placement for a child in the custody of the Division of Child and Family Services, in accordance with the requirements of federal law. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

62A-4a-205, as last amended by Chapter 255, Laws of Utah 2001

62A-4a-206, as last amended by Chapter 274, Laws of Utah 1998

62A-4a-209, as enacted by Chapter 250, Laws of Utah 2001

78-3a-312, as last amended by Chapter 21, Laws of Utah 2001

78-3a-315, as last amended by Chapter 274, Laws of Utah 1998

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **62A-4a-205** is amended to read:

62A-4a-205. Treatment plans.

(1) No more than 45 days after a child enters the temporary custody of the division, the child's treatment plan shall be finalized.

(2) The division shall use an interdisciplinary team approach in developing each treatment plan. An interdisciplinary team shall include, but is not limited to, representatives from mental health, education, and, where appropriate, a representative of law enforcement.

(3) (a) The division shall involve all of the following in the development of a child's treatment plan:

- (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
- (ii) the child;
- (iii) the child's foster parents; and
- (iv) where appropriate, the child's stepparent.

(b) In relation to all information considered by the division in developing a treatment plan, additional weight and attention shall be given to the input of the child's natural and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

(4) A copy of the treatment plan shall be provided to the guardian ad litem, and to the child's natural parents and foster parents immediately upon completion, or as soon as is reasonably possible thereafter.

(5) Each treatment plan shall specifically provide for the safety of the child, in accordance with federal law, and clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child.

(6) The plan shall set forth, with specificity, at least the following:

- (a) the reason the child entered Division of Child and Family Services custody, and documentation of the reasonable efforts made to prevent placement, or documentation of the emergency situation that existed and that prevented reasonable efforts;
- (b) the primary permanency goal for the child and the reason for selection of that goal;
- (c) the concurrent permanency goal for the child and the reason for the selection of that goal;
- (d) if the plan is for the child to return to ~~his~~ the child's family, specifically what the parents

must do in order to enable the child to be returned home, specifically how those requirements may be accomplished, and how those requirements will be measured;

(e) the specific services needed to reduce the problems that necessitated placement in the division's custody, and who will provide for and be responsible for case management;

(f) a parent-time schedule between the natural parent and the child;

(g) the health care to be provided to the child, and the mental health care to be provided to

address any known or diagnosed mental health needs of the child. If residential treatment, rather than a foster home, is the proposed placement, a specialized assessment of the child's health needs shall be conducted, including an assessment of mental illness and behavior and conduct disorders; and

(h) social summaries that include case history information pertinent to case planning.

(7) (a) Each treatment plan shall be specific to each child and ~~[his]~~ the child's family, rather than general. The division shall train its workers to develop treatment plans that comply with federal mandates and the specific needs of the particular child and ~~[his]~~ the child's family.

(b) All treatment plans and expectations shall be individualized and contain specific time frames.

(c) Treatment plans shall address problems that keep children in placement and keep them from achieving permanence in their lives.

(d) The child's natural parents, foster parents, and where appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.

(8) With regard to a child who is three years of age or younger, if the goal is not to return the child home, the permanency plan for that child shall be adoption ~~[unless there are documented extenuating circumstances that justify long-term foster care or guardianship]~~. However, if the division documents to the court that there is a compelling reason that adoption, reunification, guardianship, and kinship placement are not in the child's best interest, the court may order another planned permanent living arrangement in accordance with federal law.

Section 2. Section **62A-4a-206** is amended to read:

62A-4a-206. Process for removal of a child from foster family -- Procedural due process.

(1) (a) The Legislature finds that, except with regard to a child's natural parent or legal guardian, a foster family has a very limited but recognized interest in its familial relationship with a foster child who has been in the care and custody of that family. In making determinations regarding removal of a child from a foster home, the division may not dismiss the foster family as

a mere collection of unrelated individuals.

(b) The Legislature finds that children in the temporary custody and custody of the division are experiencing multiple changes in foster care placements with little or no documentation, and that numerous studies of child growth and development emphasize the importance of stability in foster care living arrangements.

(c) For the reasons described in Subsections (1)(a) and (b), the division shall provide procedural due process for a foster family prior to removal of a foster child from their home, regardless of the length of time the child has been in that home, unless removal is for the purpose of:

(i) returning the child to ~~his~~ the child's natural parent or legal guardian~~[-or for the immediate placement of];~~

(ii) immediately placing the child in an approved adoptive home~~[-];~~

(iii) placing the child with a relative, as defined in Subsection 78-3a-307(5)(d), who obtained custody or asserted an interest in the child within the preference period described in Subsection 78-3a-307(8); or

(iv) placing an Indian child in accordance with preplacement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

(2) (a) The division shall maintain and utilize due process procedures for removal of a foster child from a foster home, in accordance with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(b) Those procedures shall include requirements for:

(i) personal communication with and explanation to foster parents prior to removal of the child; and

(ii) an opportunity for foster parents to present their information and concerns to the division and to request a review by a third party neutral fact finder prior to removal of the child.

(c) If the division determines that there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, it shall place the child in emergency foster care during the pendency of the procedures described in this

subsection, instead of making another foster care placement.

(3) If the division removes a child from a foster home based upon the child's statement alone, the division shall initiate and expedite the processes described in Subsection (2). The division may take no formal action with regard to that foster parent's license until after those processes, in addition to any other procedure or hearing required by law, have been completed.

(4) When a complaint is made to the division by a foster child against a foster parent, the division shall, within 30 business days, provide the foster parent with information regarding the specific nature of the complaint, the time and place of the alleged incident, and who was alleged to have been involved.

(5) Whenever the division places a child in a foster home, it shall provide the foster parents with:

(a) notification of the requirements of this section;

(b) a written description of the procedures enacted by the division pursuant to Subsection (2) and how to access those processes; and

(c) written notification of the foster parents' ability to petition the juvenile court directly for review of a decision to remove a foster child who has been in their custody for 12 months or longer, in accordance with the limitations and requirements of Section 78-3a-315.

(6) The requirements of this section do not apply to the removal of a child based on a foster parent's request for that removal.

Section 3. Section **62A-4a-209** is amended to read:

62A-4a-209. Emergency kinship placement.

(1) The division may use an emergency kinship placement under Subsection 78-3a-301(4) when:

(a) the case worker has made the determination that:

(i) the child's home is unsafe;

(ii) removal is necessary under the provisions of Section 78-3a-301; and

(iii) the child's custodial parent or guardian will agree to not remove the child from the relative's home who serves as the kinship placement and not have any contact with the child until

after the shelter hearing required by Section 78-3a-306;

(b) a relative, with preference being given to a noncustodial parent in accordance with Section 78-3a-307, can be identified who has the ability and is willing to provide care for the child who would otherwise be placed in shelter care, including:

(i) taking the child to medical, mental health, dental, and educational appointments at the request of the division; and

(ii) the relative has the ability to make the child available to division services and the guardian ad litem; and

(c) the relative agrees to care for the child on an emergency basis under the following conditions:

(i) the relative meets the criteria for an emergency kinship placement under Subsection (2);

(ii) the relative agrees to not allow the custodial parent or guardian to have any contact with the child until after the shelter hearing unless authorized by the division in writing;

(iii) the relative agrees to contact law enforcement and the division if the custodial parent or guardian attempts to make unauthorized contact with the child;

(iv) the relative agrees to allow the division and the child's guardian ad litem to have access to the child;

(v) the relative has been informed and understands that the division may continue to search for other possible kinship placements for long-term care, if needed;

(vi) the relative is willing to assist the custodial parent or guardian in reunification efforts at the request of the division, and to follow all court orders; and

(vii) the child is comfortable with the relative.

(2) Before the division places a child in an emergency kinship placement, the division must:

(a) request the name of a reference and when possible, contact the reference and determine the answer to the following questions:

(i) would the person identified as a reference place a child in the home of the emergency kinship placement; and

(ii) are there any other relatives to consider as a possible emergency or long-term placement

for the child;

(b) have the custodial parent or guardian sign an emergency kinship placement agreement form during the investigation;

(c) complete a criminal background check described in Sections 62A-4a-202.4 and 78-3a-307.1 on all persons living in the relative's household;

(d) complete a home inspection of the relative's home; and

(e) have the emergency kinship placement approved by a family service specialist.

(3) As soon as possible after the emergency placement and prior to the shelter hearing required by Section 78-3a-306, the division shall convene a family unity meeting.

(4) After an emergency kinship placement, the division caseworker must:

(a) respond to the emergency kinship placement's calls within one hour if the custodial parents or guardians attempt to make unauthorized contact with the child or attempt to remove the child;

(b) complete all removal paperwork, including the notice provided to the custodial parents and guardians under Section 78-3a-306;

(c) contact the attorney general to schedule a shelter hearing;

(d) complete the kinship procedures required in Section 78-3a-307, including, within five days after placement, the criminal history record check described in Subsection (5); and

(e) continue to search for other relatives as a possible long-term placement, if needed.

(5) (a) In order to determine the suitability of the kinship placement and to conduct a background screening and investigation of individuals living in the household in which a child is placed, each individual living in the household in which the child is placed who has not lived in the state substantially year round for the most recent five consecutive years ending on the date the investigation is commenced shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the division to the Federal Bureau of Investigation for a national criminal history record check.

(b) The cost of those investigations shall be borne by whomever received placement of the child, except that the division may pay all or part of the cost of those investigations if the person with

whom the child is placed is unable to pay.

Section 4. Section **78-3a-312** is amended to read:

78-3a-312. Permanency hearing -- Final plan -- Petition for termination of parental rights filed -- Hearing on termination of parental rights.

(1) (a) When reunification services have been ordered in accordance with Section 78-3a-311, with regard to a child who is in the custody of the Division of Child and Family Services, a permanency hearing shall be held by the court no later than 12 months after the original removal of the child.

(b) When no reunification services were ordered at the dispositional hearing, a permanency hearing shall be held within 30 days from the date of the dispositional hearing.

(2) (a) If reunification services were ordered by the court in accordance with Section 78-3a-311, the court shall, at the permanency hearing, determine whether the child may safely be returned to the custody of [his] the child's parent. If the court finds, by a preponderance of the evidence, that return of the child would create a substantial risk of detriment to the child's physical or emotional well-being, the child may not be returned to the custody of [his] the child's parent. The failure of a parent or guardian to participate in, comply with, in whole or in part, or to meet the goals of a court approved treatment plan constitutes prima facie evidence that return of the child to that parent would create a substantial risk of detriment.

(b) In making a determination under this Subsection (2), the court shall review the report prepared by the Division of Child and Family Services, a report prepared by the child's guardian ad litem, any report prepared by a foster care citizen review board pursuant to Section 78-3g-103, any evidence regarding the efforts or progress demonstrated by the parent, and the extent to which the parent cooperated and availed himself of services provided.

(3) (a) With regard to a case where reunification services were ordered by the court, if a child is not returned to [his] the child's parent or guardian at the permanency hearing, the court shall order termination of reunification services to the parent, and make a final determination regarding whether termination of parental rights, adoption, or permanent custody and guardianship[~~, or long-term foster care~~] is the most appropriate final plan for the child, taking into account the child's primary

permanency goal established by the court pursuant to Section 78-3a-311. If the Division of Child and Family Services documents to the court that there is a compelling reason that adoption, reunification, guardianship, and kinship placement are not in the child's best interest, the court may order another planned permanent living arrangement, in accordance with federal law. If the child clearly desires contact with the parent, the court shall take the child's desire into consideration in determining the final plan. In addition, the court shall establish a concurrent plan that identifies the second most appropriate final plan for the child.

(b) The court may not extend reunification services beyond 12 months from the date the child was initially removed from ~~his~~ the child's home, in accordance with the provisions of Section 78-3a-311, except that the court may extend reunification services for no more than 90 days if it finds that there has been substantial compliance with the treatment plan, that reunification is probable within that 90 day period, and that the extension is in the best interest of the child. In no event may any reunification services extend beyond 15 months from the date the child was initially removed from ~~his~~ the child's home. Delay or failure of a parent to establish paternity or seek custody does not provide a basis for the court to extend services for that parent beyond that 12-month period.

~~(b)~~ (c) The court may, in its discretion, enter any additional order that it determines to be in the best interest of the child, so long as that order does not conflict with the requirements and provisions of ~~Subsection~~ Subsections (3)(a) and (b). The court may order the division to provide protective supervision or other services to a child and the child's family after the division's custody of a child has been terminated.

(4) If the final plan for the child is to proceed toward termination of parental rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days after the permanency hearing.

(5) Any party to an action may, at any time, petition the court for an expedited permanency hearing on the basis that continuation of reunification efforts are inconsistent with the permanency needs of the child. If the court so determines, it shall order, in accordance with federal law, that the child be placed in accordance with the permanency plan, and that whatever steps are necessary to

finalize the permanent placement of the child be completed as quickly as possible.

(6) Nothing in this section may be construed to:

(a) entitle any parent to reunification services for any specified period of time;

(b) limit a court's ability to terminate reunification services at any time prior to a permanency hearing; or

(c) limit or prohibit the filing of a petition for termination of parental rights by any party, or a hearing on termination of parental rights, at any time prior to a permanency hearing. If a petition for termination of parental rights is filed prior to the date scheduled for a permanency hearing, the court may consolidate the hearing on termination of parental rights with the permanency hearing. If the court consolidates the hearing on termination of parental rights with the permanency hearing, it shall first make a finding whether reasonable efforts have been made by the Division of Child and Family Services to finalize the permanency goal for the child, and any reunification services shall be terminated in accordance with the time lines described in Section 78-3a-311. A decision on the petition for termination of parental rights shall be made within 18 months from the date of the child's removal.

Section 5. Section **78-3a-315** is amended to read:

78-3a-315. Review of foster care removal -- Foster parent's standing.

(1) With regard to a child in the custody of the Division of Child and Family Services who is the subject of a petition alleging abuse, neglect, or dependency, and who has been placed in foster care with a foster family, the Legislature finds that:

(a) except with regard to the child's natural parents, a foster family has a very limited but recognized interest in its familial relationship with the child; and

(b) children in the custody of the division are experiencing multiple changes in foster care placements with little or no documentation, and that numerous studies of child growth and development emphasize the importance of stability in foster care living arrangements.

(2) For the reasons described in Subsection (1), the Legislature finds that, except with regard to the child's natural parents, procedural due process protections must be provided to a foster family prior to removal of a foster child from their home.

(3) (a) A foster parent who has had a foster child in his custody for 12 months or longer may petition the juvenile court for a review and determination of the appropriateness of a decision by the Division of Child and Family Services to remove the child from ~~[his]~~ the child's home, unless the removal was for the purpose of:

(i) returning the child to ~~[his]~~ the child's natural parent~~[-or for the immediate placement of]~~
or legal guardian;

(ii) immediately placing the child in an approved adoptive home~~[-];~~

(iii) placing the child with a relative, as defined in Subsection 78-3a-307(5)(d), who obtained custody or asserted an interest in the child within the preference period described in Subsection 78-3a-307(8); or

(iv) placing an Indian child in accordance with preplacement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

(b) The foster parent may petition the court under this section without exhausting administrative remedies within the division.

(c) The court may order the division to place the child in a specified home, and shall base its determination on the best interest of the child.

(4) The requirements of this section do not apply to the removal of a child based on a foster parent's request for that removal.